

SECRETARY OF STATE[721]**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State amends Chapter 21, “Election Forms and Instructions,” and Chapter 28, “Voter Registration File (I-Voters) Management,” Iowa Administrative Code.

These amendments are necessary to establish a formal procedure for investigating and resolving complaints and information received by the Secretary of State involving but not limited to the following subject matters: election administration, voter registration, absentee voting, fraudulent voting and electioneering. The Secretary of State is the chief state election official and has a legal obligation to oversee the conduct of elections in the state by county election commissioners. The Secretary of State is also the state registrar of voters and has a legal obligation to regulate the preparation, preservation and maintenance of voter registration records in the state. The Secretary of State is further authorized to issue notices of technical infractions when the Secretary becomes aware of an apparent violation of the election and voter registration provisions contained in Iowa Code chapters 39 through 53.

Pursuant to Iowa Code section 17A.4(3), the Secretary of State finds that notice and public participation are contrary to the public interest because a formal procedure is needed prior to the November 6, 2012, Presidential Election to ensure all complaints received by the Secretary of State are treated uniformly, investigated properly and, if necessary, forwarded to the appropriate officials for prosecution.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Secretary of State further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments be made effective upon filing. These amendments confer a benefit upon the voting public by ensuring that there is a legitimate procedure in place for investigating and resolving complaints involving but not limited to the following subject matters: election administration, voter registration, absentee voting, fraudulent voting and electioneering.

These amendments are also published herein under Notice of Intended Action as **ARC 0271C** to allow for public comment.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 39 through 53.

These amendments became effective July 20, 2012.

The following amendments are adopted.

ITEM 1. Adopt the following new rule 721—21.100(39A,47):

721—21.100(39A,47) Complaints concerning violations of Iowa Code chapters 39 through 53.

21.100(1) *Complaint filed.* A person who wishes to file a complaint concerning an alleged violation of any provision of Iowa Code chapters 39 through 53 shall:

a. File a written complaint with the secretary of state, on the form provided by the secretary of state’s office.

b. Include the complainant’s signature and contact information. Complaints lacking this information may be dismissed by the secretary of state’s office without further investigation.

21.100(2) *Complaints forwarded to appropriate Iowa agency for follow-up.* The complaint shall be forwarded to the appropriate Iowa agency for further investigation and follow-up as deemed necessary.

This rule is intended to implement Iowa Code chapters 39 through 53.

ITEM 2. Adopt the following new rule 721—28.5(47,48A):

721—28.5(47,48A) Noncitizen registered voter identification and removal process.

28.5(1) *Periodic matching of foreign national files and the voter registration list.* The state registrar of voters may periodically engage in obtaining lists of foreign nationals who are residing in Iowa from

a federal or state agency. The list of foreign nationals may be matched against the voter registration records to determine likely matches based on predetermined search criteria.

28.5(2) *Confirming matches between the foreign national file and the voter registration list.* After producing a list of likely matches, the secretary of state's office shall turn the list of likely matches over to the appropriate Iowa agency for additional follow-up and a determination as to whether the voter registration record is an exact match to an individual listed on the foreign national file. The secretary of state's office shall also determine whether the registrant has obtained citizenship status subsequent to the date the record in the file was generated.

28.5(3) *Removing confirmed matches from the voter registration list.* Upon receipt of information indicating a noncitizen is registered to vote, the secretary of state's office shall take the following steps to ensure removal of the voter's name from the voter registration list.

a. Voter notification. The secretary of state's office shall notify the voter that the secretary of state's office has received information indicating the registered voter may not be a citizen of the United States and may be illegally registered to vote. The notice shall advise the registrant that illegally registering to vote is classified as a class "D" felony under Iowa law and shall further advise the registrant that if the information received by the secretary of state is correct, the voter should request cancellation of the voter registration record by sending a written notice to the county registrar of voters in the county where the registrant is currently registered to vote. The voter shall also be notified of the voter's right to dispute and respond to the information received by the secretary of state's office. The voter shall further be advised that failure to request removal from the voter registration list or respond to the notice within 14 days of the date of the notice may result in the commencement of a challenge to the voter's registration as set forth in Iowa Code section 48A.14. The notice from the secretary of state shall include a postage-paid envelope and response form.

b. County registrar notification. If a voter receives a notice from the secretary of state's office pursuant to paragraph 28.5(3) "a" and fails to respond to the notice within 14 days, the secretary of state's office shall also notify the county registrar that the secretary of state's office has received information indicating the registered voter may not be a citizen of the United States and may be illegally registered to vote. The county registrar shall notify the secretary of state's office when any voter who is the subject of one of these notices requests cancellation of the voter's record.

c. Failure of registrant to request removal from voter registration list. If a registered voter receives notice pursuant to this rule from the secretary of state's office and does not respond to the notice by either notifying the secretary of state's office that the registrant believes the secretary of state's information to be erroneous or by requesting removal of the registrant's name from the voter registration list, the voter's name may be removed pursuant to the process provided in Iowa Code sections 48A.14 through 48A.16.

d. Noncitizen registrant with active absentee ballot request. If a county registrar receives notice pursuant to this rule from the secretary of state's office for a registrant who has an active absentee ballot request on the voter's record, the commissioner shall attach the notice from the secretary of state's office regarding the registrant to the voter's absentee ballot affidavit envelope if the absentee ballot is returned to the auditor's office. The commissioner shall instruct the precinct election officials to challenge the voter's absentee ballot as provided in Iowa Code section 53.31.

e. Noncitizen registrant with voting history on voter record. If a county registrar receives notice pursuant to this rule from the secretary of state's office for a registrant who has previous voting history on the voter's record, the commissioner shall immediately print a copy of the voter's voting history, make copies of any signed election registers or absentee ballot affidavit envelopes that are still in the custody of the commissioner and make a copy of the notice received by the county registrar pursuant to this rule.

The foregoing list of documents shall be forwarded to the secretary of state's office within 30 days of receipt of the notice.

This rule is intended to implement Iowa Code chapters 39A, 48A, 49 and 53.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/8/12.